



Practical, Prompt, Professional HR Solutions

## Newsletter

### October 2008

Welcome to the 51<sup>st</sup> edition of your monthly HR newsletter.

In this issue we cover:

- Recent Employment Tribunal (ET) Outcomes
- Employment Legislation Changes in October
- Home working
- 3-Steps Statutory Dispute Regulations
- Question and Answer

At **Complete People Management Ltd** we want you to receive a newsletter that is informative and assists you in dealing with your people matters. If you like the newsletter, tell someone about it. If you don't, please tell us. Your feedback is important to us.



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**You can ring for free when you use Skype**

## This month's offer

- ❖ Working at Home policy –reduced price at just £25 plus VAT

## Employment Statistics

Visit the website to find out more:

[http://www.completepeoplemanagement.co.uk/24/?form\\_16.userid=4&form\\_16.replyids=9](http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=9)



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## Recent Employment Tribunal Outcomes



### **Age Discrimination – final decision some months away**

An Advocate-general, a senior legal advisor to the European Court of Justice has rejected a challenge to the right of employers to make employees retire at the age of 65. To find out more visit the BBC website here: <http://news.bbc.co.uk/2/hi/business/7629384.stm>

### **Holiday pay and notice periods**

In Industry & Commerce Maintenance versus Briffa, Mr Briffa was given one week's notice to terminate his employment. During this notice period the company required that he take 4 days as holiday in order to use his entitlement.

The ET held that the company was in breach of the Working Time Regulations as they were required to give double the amount of time to be taken in holiday days in notice to take the holiday days. Mr Biffa was not given 8 days notice and was awarded 4 days pay in lieu of the 4 holiday days.

The company appealed and the EAT found that their was a contract in place that was enforceable and allowed for the Working Time Regulations to be varied.

### **Contractual clauses**

In Tullett Prebon Group Ltd versus El-Hajjali, El-Hajjali was offered a senior employment position with the company, Tullett. The company and El-Hajjali had negotiated the terms of his contract of employment. This included a "no show" clause which stipulated that in the event he failed to start work with the company he would have to pay damages. This amounted to approx £293,000.

El-Hajjali signed the contract and soon afterwards informed the company that he had decided to stay with his current employer.

The High Court ruled that El-Hajjali had had the benefit of legal advice throughout the negotiations with the company and had not challenged the no show clause at any time.

El-Hajjali argued that the clause was a penalty clause rather than a liquidated damages clause and was therefore void.

The company established that they had incurred a loss as a result of El-Hajjali's failure to work for the company and this loss amounted to more than the amount stated in the no-show clause. The estimated loss was between £2.5 and £3.7m.

The clause was found to be enforceable as a liquidated damages clause rather than a penalty clause.

### **Job adverts and discrimination**

Milton Keynes council advertised for a teacher in "the first five years of their career" because they were seeking to employ a cheaper and less experience teacher. Mrs Rainbow applied for the job. She had 34 years teaching experience. The ET found the Rainbow had suffered from indirect discrimination because the council had failed to demonstrate that it was compelled to hire a cheaper person due to cost.



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## What's New in October?



October is one of the two times each year when new legislation comes into force. So what's happening in October 2008?

The **National Minimum Wage** will increase on the 1<sup>st</sup> October 2008 as follows:

- Over 22 year olds to rise to £5.73
- 18 to 21 years olds to rise to £4.77 per hour
- 16 to 17 year olds to rise to £3.53 per hour

**Maternity and Adoption Leave benefit entitlements** changes on the 5<sup>th</sup> October 2008.

Where the expected week of child birth is on or after the 5<sup>th</sup> of October the employee has the right to the same terms and conditions of employment during their additional maternity leave (AML) as they have during ordinary maternity leave (OML).

Where a child is adopted on or after the 5<sup>th</sup> October the employee has the right to the same terms and conditions of employment during their additional adoption leave (AAL) as they have during ordinary adoption leave (OAL).

- Employees will continue to accrue statutory and contractual holiday entitlement during the additional maternity/adoption leave period.
- Employers will need to bear the cost of the employee's benefits that continue during the AML/AAL period e.g. car allowance, pension contributions, childcare vouchers, etc. Deductions cannot be made from the employee's SMP entitlement. It must legally be paid in full.
- Pension contributions are a difficult area as there is uncertainty regarding whether pension contributions are in effect remuneration. The Government has stipulated that pension benefits will continue only during the maternity period that is paid. This will amount to the statutory 39 weeks when pay must be paid (if the employee is eligible) or more if the employee has contractual maternity pay.

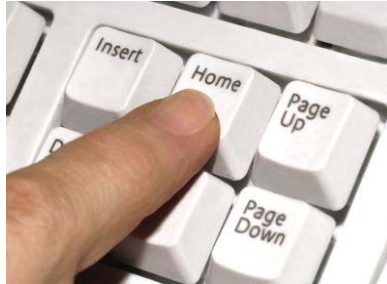
**Fixed Term Employees** (agency workers) will be entitled to statutory sick pay (SSP) from the 27<sup>th</sup> October 2008 as follows:

Agency workers will be entitled to SSP after completing three months continuous service with a company.



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## Home working



In 2007 more than 12000 BT employees worked from home on a permanent or semi-permanent basis. The employees were found to be 21% more productive and they took less sick leave.

Recent research carried out by Astra found that people who commute to the UK's largest cities outside of London could save 55 hours a year if they worked from home. In addition there are the obvious costs of transport that an employee has to pay for.

In the current difficult trading climate home working could be a very real option that your company wishes to consider as a means to reduce business operational costs. Remember redundancy can be costly and what's more when business flows in, your company needs to invest in hiring new employees again, training, etc.

Eligible employee's have the right to request to work at home under the flexible working regulations. Complete People Management Ltd challenge employers to enhance the regulations to include all employees whether eligible or not. While it is realised that home working is not appropriate for all types of jobs or indeed for all employees it can have some real business benefits namely:

- Increased productivity
- Reduced absence
- Increased loyalty
- More focused employee through management by objectives
- Reduced carbon footprint
- Reduced business costs e.g. office space, leasing, renting, mortgage, insurances, etc.

Working apart while working together does have its challenges however managed well it can be a win win for the employer and the employee. The manager will however need to make some step changes for example:

- Learning to manage people from a distance
- Trusting employees to undertake their work
- Managing employee's output as opposed to input e.g. hours worked
- Respecting employee's private time
- Adopting different communication methods e.g. VoiP, web cams, etc

Telephone us on **0208 8168 726** to find out more or to purchase our home working policy.



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## 3 Steps - Statutory Dispute Regulations



The law governing dismissal, grievance and disciplinary procedures has created many frustrations for employers since it came into force in 2004. It is however planned that in 2009 the procedures will be changed. Current indications are however that these changes will be minor. For example:

- Disputes to be resolved in accordance with the relevant code of practice.
- Removing the extended time limits for claims to Employment Tribunals.

So with this in mind, here are a few reminders regarding dealing with the procedures fairly and consistently:

1. Remember the 3 step procedure as follows:
  - a. write to the employee inviting them to a meeting. Tell them what the meeting is about and that they have a right to be represented;
  - b. conduct the meeting and;
  - c. inform the employee of their right to appeal.
2. Ensure that the employee receives all the evidence related to the case in advance of any disciplinary or dismissal meeting in order that they are able to prepare their case. Failing to do so will result in an automatic unfair dismissal decision being made at an ET.
3. Ensure each and every complaint is treated seriously. Ask the employee to put any complaint in writing with the full facts (what happened, when, who witnessed the event(s), etc) and treat this as a grievance.
4. Ensure that any employee who is employed on a fixed term contract attends a meeting prior to the end date to:
  - a. have their employment confirmed as permanent;
  - b. have their employment extended for a further fixed term period or;
  - c. confirm the employment is terminated.

In addition the 3 step procedure stated in 1 above must be followed.

5. Ensure that any employee whose employment is to be terminated during or at the end of their probationary period is taken through the 3 step procedure. Even though such an employee may have no claim for unfair dismissal as they are likely to have less than 12 months service, they may be able to make another claim, e.g. discrimination and this is where the 3 step procedure will be allowable as a claim. This very situation arose in the case RKS Services versus Palen 2007. See [http://www.completepeoplemanagement.co.uk/24/?form\\_16.userid=4&form\\_16.replyids=8](http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=8) for further information.

At **Complete People Management Limited** we offer Discipline and Grievance policies and procedures, related employment forms and letters and related employment advice. To find out more contact us at [info@completepeoplemanagement.co.uk](mailto:info@completepeoplemanagement.co.uk) or on **0208 8168 726**.



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## Questions and Answers



At **Complete People Management Limited** we want to help you manage your people effectively. If you have a question that you want answered then ask us. We will not disclose your identity. What have you got to lose? ***It's free!***

**Q:** An employee's probationary period is due to end next week. They are not performing to the standards required. Can I extend the probationary period or terminate the employee's contract of employment.

**A:** Regular performance reviews should take place during an employee's probationary period. This is important for a number of reasons such as letting the employee know how they are doing as well as having evidence to prove their performance and conduct during this period. Where there is a gap between the standard required and the employee's performance it is important that support, training, coaching, etc is made available to the employee.

The employee in question here must be invited to a meeting to discuss their performance. During the meeting the employee must be informed of what the standards are and what the outcome of the failure to achieve the standards will be, i.e. termination of employment.

It is vital that the 3 step dispute resolution procedure is followed in this instance. (See earlier article).

The employee's probationary period can be extended. Terminating the employee's employment can take place if the 3 step procedure is implemented before the dismissal takes place and the employee has been given every chance to meet the standards required and has been given the appropriate training, etc during the probationary period.

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The newsletter is sent to you each month and includes information about employment legislation changes and top tips on an employment subject in a concise format. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at [info@completepeoplemanagement.co.uk](mailto:info@completepeoplemanagement.co.uk) If you know of anyone who may also be interested in receiving the newsletter please ask them to register on the company website or contact us directly.

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